IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 359 of 1999

in

CRIMINAL MISC.APPLICATIONNo 3768 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GITABE GANESHBHAI PRAJAPATI

Versus

RESIDENTS OF GOPAL SURYA COMPLEX FLATS

Appearance:

MR NAVIN K PAHWA for Petitioner

MR ATUL G BAROT for Respondent No. 1

MR SP DAVE APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2001

ORAL JUDGEMENT

1 . This Criminal Revision Application under Section 397 of the Criminal Procedure Code, 1973 (for short "Code") has been filed by the petitioner abovenamed for challenging the judgement and order dated 22nd June, 1999 recorded by the learned Sub-Divisional Magistrate and Executive Magistrate, Ahmedabad city in CR.P.C.133/Remand Case No. 2/98 under which, the learned Executive Magistrate passed an order directing the closure of the flour Mill of the petitioner situated at ground floor of Gopal Surya Complex at Ahmedabad.

2. It appears that an application was made before the learned Executive Magistrate by the occupants of Gopal Surya Complex, that the respondent was indiscriminately using her flour mill and it caused nuisance and annoyance to the holders of the flats and therefore, the said application was made under Section 133 of the Code for preventing the petitioner from using the said premise for working as flour mill and for the closure of the said flour mill.

3. After some proceedings and after some remand orders, the learned Executive Magistrate ultimately passed an order on 22nd June, 1999 directing the petitioner under Section 133 of the Code for the closure of the flour mill within 24 hours. The learned Magistrate also directed the Police Inspector of Ghatlodia Police Station to implement the said order.

4. Feeling aggrieved by the said judgement and order of the learned Executive Magistrate, the present petitioner has preferred this Criminal Revision Application under Section 397 of the Code.

5. It had been mainly contended that the learned Magistrate had not taken proper steps before passing the order in question and the learned Magistrate has not considered the legal and factual aspects of the case before passing the order in question. That the whole judgement and order passed by the learned Magistrate are illegal and erroneous and deserve to be set aside. It is therefore, prayed by the petitioner that the present revision application be allowed and the order passed by the learned Executive Magistrate dated 22nd June, 1999 at page 12 be set aside.

6. Rule was issued and it has been duly served upon the respondents.

7. Mr. S.P. Dave, Ld. APP appears for the State

of Gujarat. Mr. Atul Barot, learned advocate appears for the contesting respondent. I have heard the learned advocates for both the sides. They have taken me through the memo of this Revision Application.

8. It is clear that the flour mill is being functioning in a residential area and in the residential premise itself. At the same time, it is also found that certain non residential activities are also going on in the vicinity of this locality.

9. The main ground made out by the learned advocate for contesting respondent no. 1 is that the flour mill is being run indiscriminatingly for round the clock. That it starts in the early hours and it continues to work till late night. That, because of the indiscriminating functioning of the said flour mill, the residents and occupants of this flat experienced nuisance and annoyance.

10. At the same time, learned advocate for the petitioner also argues that if the flour mill is, not allowed to be run even reasonably, then naturally there would be some difficulty for the occupants in the area also.

11. In above view of the matter, I am of the view that the total closure of the flour mill would be ex-facie an illegal order. When other non-residential activities are being performed and undertaked in the vicinity of this locality, then it would not be wrong or illegal to permit the present petitioner to run flour mill, provided she works reasonably and rationally.

12. If the functioning of the flour mill starts from the early hours of the day and if, it continues till late night hours then naturally, it may amount to nuisance and annoyance to the persons occupying the flats and even to the neighbours, therefore, such indiscriminate use has to be deprecated.

13. At the same time, reasonable functioning of the flour mill may not amount to nuisance and annoyance in all cases and in other words, reasonable and rational use of such flour mill will render goods services to the neighbouring flat - occupants to grind the grains and obtain the flour as a basic requirement of human beings and therefore, the matter has to be viewed liberally. Every body may not have facility of grinding of grains at their residence. Therefore, a common flour mill is a matter of necessity also.

14. Therefore, with a view to find out a proper situation, it would be appropriate to see that the flour mill is made to function during reasonable hours.

15. For searching out such reasonable hours, it may be seen that early in the morning would not be a proper time for commencing of the functioning of the flour mill. At the same time, the noon hours would be the relaxing hours and therefore, it would also not proper time for the functioning of the flour mill. Same way late evening and late night hours also not reasonable for the said purpose.

16. Under the aforesaid circumstances, it would be proper to restrict the functioning of the flour mill from 9 a.m. to 12 noon and from 4 p.m. to 7 p.m. The flour mill may function for the aforesaid period only and it should remain closed for the remaining hours. If, that is done, then there may not any nuisance and annoyance to the people in neighboring flats.

17. Under the aforesaid facts and circumstances of the case, I am of the view that the learned Executive Magistrate has not properly considered the said aspect in its proper perspective. Therefore, the order passed by the learned Magistrate cannot be considered as legal and therefore, it is necessary for this Court to interfere with the said order, while exercising revisional jurisdiction under Section 397 of the Code.

18. In the aforesaid facts and circumstances of the case, this Revision Application is partly allowed. The order passed by the learned Executive Magistrate on 22nd June, 1999 in CR.P.C. 133/Remand case No. 2/98 is hereby quashed and set aside. The petitioner is directed to run her flour mill between 9 a.m. to 12 noon and from 4 p.m. to 7 p.m. only. The petitioner shall not run her flour mill during the hours except the aforesaid hours mentioned hereinabove.

19. With these observations, this Criminal Revision Application is partly allowed and the order of the learned Executive Magistrate is hereby quashed and set aside. Rule is made absolute to that extent indicated above.

(D.P. Buch,J.)

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